

P E R S P E C T I V E S

S E R I E S

The South African Truth Commission

The Politics of Reconciliation

Dorothy Shea



UNITED STATES INSTITUTE OF PEACE

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The views expressed in this book are those of the author alone. They do not necessarily reflect views of the United States Institute of Peace.

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FOREWORD

Shortly after I took up residence in South Africa in 1997, on assignment for National Public Radio, I attended my first session of the Truth and Reconciliation Commission. The commission had been under way for about two years and I was feeling a little bit bypassed by the course of its history. Archbishop Desmond Tutu, the commission's chairman, had already undergone his emotional catharsis months before, collapsing on the table at which he was sitting, his body wracked with sobs after hearing the testimony of a black man in a wheelchair, the victim of torture, harassment, and imprisonment ordered by the apartheid state. And there was more sobbing to come, mostly from other victims of the brutality of the apartheid security agents. "The crying," wrote reporter Antjie Krog, is "the ultimate sound of what the process is all about."

Now, way past all that, I thought, I was entering a room where for the first time top political leaders from the apartheid state were going to testify about their role in what one called "the dirty war" against its opponents. The hearing was supposed to establish a clear picture of the chain of command from top to bottom—to determine who gave the orders that resulted in thousands of atrocities committed by police, soldiers, and freelance terrorists of the state. Up to that point, the testimony of the "little" people—generals, police, and others toward the lower end of the totem poll—had conflicted with the politicians. The operatives had said that they had been authorized by the politicians (up to and including the state president); the political leaders, in their written submissions to the commission, had claimed that they had not.

As I entered the room, I was stunned by the ordinariness of it. I'm not sure what I was expecting, but what I found was a gray, airless room, crowded with journalists and other observers. The commissioners were sitting behind wooden desks at the front of the room, between witnesses on one side and the investigators who were to ask most of the questions on the other. And everyone was just milling around, as if they were waiting for something as ordinary as the room we were in.

Most of the radio journalists were in a separate room, where they could take a "clean" feed of the proceedings directly from the microphones being used by the participants. I busied myself trying to get a seat near the speaker that was amplifying the proceedings in the hearing room. Since this was the first hearing I had attended, I wanted to see the faces and the body language. I also wanted to witness the precise moment, if it occurred, at which the sweat broke out on the face of one pressed by the weight of the proceedings into admitting the truth.

With my tape recorder now in place and set to "Pause," I sat and waited for the moment the testimony would begin, when I would press "Play" and record whatever history was left.

I was once again surprised by all manner of developments. I heard these top officials of the former government denying that they knew that black people were being routinely murdered by its agents—denying even that words such as "eliminate" and "neutralize," "wipe out" and "destroy" meant to kill, despite the fact that the people whose names appeared as the direct object of those verbs had indeed ended up dead.

At some point, Archbishop Tutu, outstanding in his scarlet cassock and cap, moved to intervene. "In our experience as black people," he said, "it was happening all over. If you got into trouble with police, you were going to get clobbered and we took that as a natural part of what was happening in this country. . . . It was not the policy of the state security council, it was not the policy of the cabinet, but it was happening and the question we are trying to find an answer for is: How does an aberration become such a universal phenomenon. . . . Who is the mastermind behind this thing?"

At the end of the day, the room and everything in it had been transformed in my mind. It was no longer ordinary, and I no longer felt that I had missed out on the historic moment. Indeed, it was ongoing, as I was to learn in countless other hearings I would attend over the rest of the life of the commission. I would hear time and again that “ultimate sound,” hear that “ultimate denial,” hear that “ultimate moral authority”—the unassailable rightness of a position, as often expressed by “the Arch,” as Desmond Tutu was affectionately known. I would hear, too, the voices of those who would denounce these proceedings as being fairer to the perpetrators—the murderers and torturers, many of who received amnesty even when their “truth” was found wanting—than to the victims, most of who have yet to receive compensation beyond their opportunity to tell their stories and unburden their souls. I would not hear, no one would ever hear, from the architects of apartheid an answer to the question, “Who is the mastermind behind this thing?” The truth commission process is now almost over, but there are many South Africans whose sense of justice has not been assuaged or satisfied. What will satisfy them? Who knows? One woman in Sebokeng, whose husband left home one day and never returned, told me that all she wanted were the bones of her husband, and that she would not rest until she got them.

The other day, as I was preparing to go to work, now as the Johannesburg bureau chief for CNN, I was listening, as usual, to an early morning talk show. As usual, the people on the show were engaged in an intense debate—South Africans love to debate—this one about the role of the state in ensuring an education based on morality. The participants on the program had strong opinions and were encouraged to express them. The deputy minister of education, a Catholic priest who came to his present role via the liberation struggle, was the lightning rod for the debate. The people calling in were black and white, and individuals from both racial groups attacked as well as defended the minister’s position. Sometimes these debates can become quite esoteric, as this one did from time to time. But, for the most part, it was a stimulating exchange among people clearly struggling to define what kind of society they want and what kind of democracy they hope their new system will turn out to be. It was a long way

from the debates still churning over justice, truth, and reconciliation. But it struck me that this was what the Truth and Reconciliation Commission was ultimately about. The commission had helped to create the space for words and not weapons. The space for the tender roots of a new democracy to take hold. The space for those still seeking justice to continue their pursuit without fear.

To understand this singular achievement and its effect on South Africa's transformation from apartheid to democracy, which many have called "a miracle," students of the process like Dorothy Shea, a seasoned observer of world events, are invaluable. For she has taken us beyond the "rough draft" of history that we journalists produce and given us a kind of classic study that will endure.

Charlayne Hunter-Gault
Johannesburg, September 2000

My first assignment as a foreign service officer was in South Africa. Living in Johannesburg from 1992 to 1994, I witnessed some of the most exciting historical events of my lifetime. Although these were still difficult times in South Africa—with senseless violence a constant menace—promise was in the air. That promise culminated in May 1994 with the inauguration of Nelson Mandela as the first democratically elected president of that country. I remember being intrigued by talk of a Truth and Reconciliation Commission (TRC), planning for which was already under way when I returned to Washington, D.C. Little did I know that I would have the opportunity to return to South Africa and study the TRC in depth.

In carrying out this study, I have been mindful of the impressive and growing body of literature on transitional justice and I have tried to avoid duplicating the important work that has already been done. I have also been keenly aware that much about South Africa is *sui generis*—few societies have endured anything akin to the systematic repression and the myriad indignities that occurred each day under apartheid. It is largely for these reasons that I have focused on the political context in which the TRC process has been played out, looking for lessons that might be pertinent to other societies contemplating establishing truth commissions. No truth commission can be completely insulated from politics; the stakes are too high.

I am extremely grateful to the Council on Foreign Relations for awarding me the International Affairs Fellowship that allowed me to conduct this study. I also wish to thank the United States Institute of

Peace—in particular, Joe Klaitz, who directs the Jennings Randolph Fellows program, and Neil Kritz, who leads the Rule of Law program—which warmly welcomed me as a guest scholar. I am thankful, too, to John Stremlau and the University of the Witwatersrand's International Relations Department for the opportunity to serve as a guest lecturer.

I am indebted to many colleagues and former colleagues at the Department of State, especially my former boss, Greg Craig, in addition to Alan Romberg and Steve Morrison, and other colleagues on the Policy Planning Staff: thanks for believing in my ability to see this project through and for all the times I bounced ideas off you and they came back better than I ever could have formulated them. Many colleagues outside of government were likewise helpful in providing leads and encouragement; in particular, I would like to thank Ambassador Donald McHenry and Pauline Baker. Many friends and colleagues indulged me by listening to my endless monologues about the TRC. Some were even kind enough to read early drafts of the manuscript.

I was fortunate to have the opportunity to meet with and interview many of the leading experts in the field of transitional justice; I am grateful for their generosity in sharing their time and imparting their expertise. Finally, I owe a debt of gratitude to scores of South Africans: commissioners and staff of the TRC; politicians, journalists, and opinion leaders who took the time to meet with me; and, most importantly, the “ordinary” South Africans who shared their stories with me.

I continue to be inspired by the vision and sacrifices that made the TRC what it was: more than an institution, it was a process of, by, and for the South African people. It is too early to evaluate the TRC's long-term success or failure, just as it is impossible to predict how, in concrete terms, South African society will change as a result of this process. But it is not unreasonable to look for indicators of the politics at play, as well as their implications, and this is what I have attempted to do.

I concluded most of my work on the manuscript for this book in August 1999, after which I returned full time to the State Department, where I have been privileged to work for David Scheffer, the ambassador-at-large for War Crimes Issues, and where I have tried to apply some of the lessons I learned in the course of this study. I look forward to continuing

to do so in my new position at the National Security Council. Having completed this study in August 1999, I regret that I have not been able to update this book except in respect of those areas that have seen significant developments. But I am pleased to report that, as the TRC's amnesty process continues to run its course, my findings remain the same.

The views represented in these pages are mine alone; they do not necessarily reflect views of the National Security Council or the U.S. State Department, which generously allowed me to undertake this study.

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The South African Truth Commission

Human beings suffer,
They torture one another,
They get hurt and get hard.
No poem or play or song
Can fully right a wrong
Inflicted and endured.

The innocent in gaols
Beat on their bars together.
A hunger-striker's father
Stands in the graveyard dumb.
The police widow in veils
Faints at the funeral home.

History says, *Don't hope*
On this side of the grave.
But then, once in a lifetime
The longed-for tidal wave
Of justice can rise up.
And hope and history rhyme.

So hope for a great sea-change
On the far side of revenge.
Believe that a further shore
Is reachable from here.
Believe in miracles
And cures and healing wells.

Call miracle self-healing;
The utter, self-revealing
Double-take of feeling.
If there's fire on the mountain
Or lightning and storm
And a god speaks from the sky

That means someone is hearing
The outcry and the birth-cry
Of new life at its term.

—Seamus Heaney
from *The Cure at Troy*

INTRODUCTION

I accept the report as it is, with all its imperfections, as an aid that the TRC has given to us to help reconcile and build our nation.” So said President Nelson Mandela of South Africa at the October 29, 1998, ceremony at which Archbishop Desmond Tutu, chairperson of the South African Truth and Reconciliation Commission (TRC), handed over the commission’s Final Report.¹ Mandela went on to observe that

the wounds of the period of repression and resistance are too deep to have been healed by the TRC alone, however well it has encouraged us along that path. Consequently, the report that today becomes the property of our nation should be a call to all of us to celebrate and to strengthen what we have done as a nation as we leave our terrible past behind us forever.

With characteristic grace and style, Mandela set the tone for a ceremony that was mired in controversy and could have been a disaster—for the TRC as well as for his party, the African National Congress (ANC). While Mandela took the moral high road in accepting and publicly releasing a report that the ANC had launched an eleventh-hour court interdict to block, his heir apparent, then deputy president Thabo Mbeki, along with several other senior ANC officeholders, did not bother to make an appearance at the ceremony.² The ANC was not alone in its indignation, nor were its leaders alone in boycotting the ceremony. Naysayers from the right—from the National Party (NP) to the Inkatha Freedom Party (IFP) to the Freedom Front (FF)—all found fodder in the Final Report for public denunciation.³ For its part, the Democratic Party (DP) was content to focus its admonitions on the reactions of its political opponents, rather than on the TRC itself.⁴

Meanwhile, Tutu, ever the proselytizer of truth and reconciliation, intoned, "Let the waters of healing flow from Pretoria today as they flowed from the altar in Ezekiel's vision, to cleanse our land, its people, and to bring unity and reconciliation." And so the spectacle of the handover of the TRC's Final Report epitomized in many ways the politics that characterized the TRC process as a whole.

How, one might ask, did such a noble exercise degenerate into such naked political maneuvering? This *dénouement* was a far cry from the dignified solemnity that characterized the human rights violations hearings, at which victims testified about the abuses they had endured. The commissioners had wisely decided to launch the TRC process in April 1996 with these hearings to set a victim-centered tone for the commission's work. Held in civic centers, town halls, and churches across the country, these hearings always featured a lighted candle to memorialize South Africa's victims of political violence. Opened with prayers and accompanied by hymn singing, the human rights violations hearings represented the commission's—and the country's—attempt to restore honor and dignity to the victims and survivors, by giving them a platform from which to tell their highly emotive stories. In the process, South African audiences heard firsthand from victims of torture, rape, and abductions, and they heard from widows, widowers, and surviving family members about the loss of their loved ones.

Stories like that of Joyce Mthimkulu, who testified at one such hearing, have become part of the national consciousness in South Africa. Ms. Mthimkulu testified about her son, Siphiwe Mthimkulu, a political activist in the Eastern Cape who was detained on a number of occasions, tortured, poisoned with thallium (which resulted in the loss of hair and confinement to a wheelchair), and ultimately disappeared. Ms. Mthimkulu bemoaned the fact that she had never been able to give her son a proper burial (this became a common refrain in victims' hearings) and she showed the commission all that she had left of him—a clump of hair that had fallen out as a result of his poisoning.

Stories like this remind one of what the TRC process was all about. Although nothing can undo the harm that was done, these stories underscore the importance of ensuring that such abuses never recur. This book is written with the victims of South Africa's political violence in mind—recognizing that deliberation on the subject of the TRC will

amount to little if it is not informed by the sacrifices made by such victims and society's debt to them.

Much has already been written about truth commissions in comparative perspective, and about the TRC in particular.⁵ This study assumes some familiarity on both counts. Truth commissions, it seems, are in vogue. Priscilla Hayner, an independent researcher and noted scholar of truth commissions, has identified twenty-odd variations of this kind of mechanism in the past twenty-four years.⁶ Of those, some are more noteworthy than others. The South African commission is one of the best-conceived, best-funded, and well-staffed mechanisms of its kind, and the media attention it has received is unrivaled. It is also the most ambitious truth commission to date, with a mandate that includes taking measures to restore dignity to victims and granting amnesty to eligible perpetrators of gross human rights violations, in addition to establishing as complete a picture as possible of the nature, causes, and extent of gross human rights violations that took place inside and outside of South Africa's borders between 1960 and 1994.⁷ The TRC's relative success or failure, therefore, offers significant indicators of the extent to which truth commissions will persist as a tool for future transitioning societies trying to come to grips with past abuses.

This position is based on the assumption that if truth commissions collectively are perceived to be little more than feel-good exercises—if they fail to produce concrete results in terms of establishing as complete an account as possible about past abuses, restoring dignity to those who were victims of those abuses, and charting a credible course for moving beyond those abuses as a society—then those assuming power in transitioning societies will be less willing to countenance such mechanisms, regardless of how strenuously those who were responsible for atrocities under the former dispensation might lobby for them.⁸ By the same token, Western donors who are asked to underwrite future truth commissions will consider the track record of previous commissions and, in the event of disappointing results, will be less inclined to fund similar endeavors in the future. Given the unprecedented media attention the TRC has received, it will likely serve as an important point of reference for both transitioning societies and Western donors.

Beyond questions about support and funding for future truth commissions looms the prospect of external meddling. Extradition and trials

in foreign countries may await those who benefit from domestic amnesties, as demonstrated by the recent case of former Chilean dictator General Augusto Pinochet, whose extradition to Spain on counts of torture was recently considered by the English courts.⁹ Similarly, although the Rome Treaty, which established the new International Criminal Court (ICC), does not explicitly address recognition of domestic amnesty programs, most observers anticipate that the court will, at a minimum, preserve its prerogative to intervene in cases where international humanitarian law has been violated with seeming impunity.¹⁰

There is no clear road map as to how judgments such as these ultimately will be made. Hayner has noted the need for international standards for credible, effective truth commissions.¹¹ Such standards, if and when they are agreed on, could not only serve to guide architects of future truth commissions but also serve as benchmarks for *post facto* quality assessments. They could also help the ICC navigate the murky waters of amnesties and truth commissions. In the meantime, this study draws from and expands on Hayner's proposed guidelines to assess the South African TRC process. While it is still several generations too early to judge the TRC's ultimate success or failure, it would be irresponsible not to step back and look at the TRC's broader implications. In so doing, it should be emphasized that the conclusions drawn are, by necessity, of a preliminary nature.

For all the flaws in the TRC process, it is no great stretch to credit the TRC—even at this early stage—with providing a remedy to the persistent ignorance and denial in South Africa about apartheid-era atrocities. Many commentators have pointed out that, after two years of a daily barrage of media stories generated by TRC hearings, it is no longer possible for the average South African credibly to deny the nature and extent of the gross human rights violations that took place under the old regime and during the country's transition to democracy. This in itself is a remarkable achievement, and it is one that should be kept in mind as the TRC process is subjected to critical scrutiny in the following pages and elsewhere.

In that vein, this study seeks to contribute to the existing scholarship by examining some of the key innovations in the South African model, whose architects benefited from lessons learned in other countries with similar mechanisms. It also considers a variety of ways in